

LAW OFFICE OF
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PRESS RELEASE

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From: Christine Kudija, Esq., Legal Counsel
Agua Dulce Town Council

Re: Mary Johnson et al v. Agua Dulce Town Council
LASC Case No. BS 096594

On Friday, July 15, 2005, the Los Angeles Superior Court determined that the Agua Dulce Town Council (ADTC) is subject to California's Brown Act, one of the state's important open meeting statutes. This resulted from a petition for a writ of mandate against the ADTC. The Court dismissed the writ petition, but nonetheless ordered that the Brown Act applies to the ADTC. The written order will be available within the next two weeks.

On May 9th, 2005, a group of Agua Dulce residents served a petition for a writ of mandate on the Agua Dulce Town Council in Los Angeles Superior Court, Department 85. The petition requested that the Court order the ADTC to comply with the California Brown Act, (California Government Code § § 54950 et seq) one of several open meetings statutes that normally apply to public agencies. Of several allegations, the most notable was that the ADTC was interfering with the petitioners' rights under the Brown Act to make their own video recordings of Council meetings. The petitioners also alleged that the ADTC was failing to abide by its Corporate bylaws because it did not have a centralized location in which to keep records, had stopped electronically recording its meetings, and did not release copies of records in a timely manner.

The Council had stopped electronically recording meetings, not out of a desire to withhold information from the public, but only because one Councilmember, who had previously done the recording, did not run for reelection and left the Council, taking his equipment with him. Since no one had ever asked the ADTC for copies of meeting recordings, the ADTC did not act immediately to replace the equipment. It was some time after the Councilmember's resignation that the petitioners brought in a video crew to record ADTC meetings. The video crew was initially noisy and intrusive,

panning the audience in addition to focusing on the Councilmembers, blocking an exit and talking among themselves. The alleged interference with videotaping began on April 27th, when, after enduring the video crew for a number of meetings, the ADTC moved to prohibit videotaping by any non-member entities.

Reacting to the petition, the ADTC rescinded its motion on May 29th, in an attempt to render the petition moot. However, the petitioners claimed that they had no assurance that they would again be denied the right to videotape, and persisted in the litigation. They continued also to accuse the ADTC of refusing to release copies of minutes and to arrange for a centralized storage location for ADTC records.

The mandamus hearing occurred on Friday, July 15, 2005, in downtown Los Angeles. Christine M. Kudija, of Santa Clarita, represented the ADTC, arguing that it was not subject to the Brown Act because it was neither a "local agency" nor a "legislative body" as defined under the Brown Act, nor as a non-profit, public benefit corporation, run by volunteers, and with no public authority over persons or property, should it be. Furthermore, Ms. Kudija submitted evidence to the Court that the ADTC had cured any failures to adhere to its bylaws and the California Corporations Code by answering requests for records within a reasonable time and by contracting for a storage facility. However, petitioners' attorney, Richard A. Fond, of Century City, argued that despite any "curing" of corporate failures, that Agua Dulce was still technically a town and a legislative body under the Brown Act, and should be required by mandamus to comply with it.

The result was a mixed victory for both parties. Superior Court Judge Dzintra Janavs denied the writ of mandate but nevertheless ordered the Agua Dulce Town Council to comply with the Brown Act. Her reasoning was based on two technical provisions of the Act, specifically that Agua Dulce as a "town" was a local agency under the Act, and because the ADTC provides advice to Los Angeles County on development issues, it is a "legislative body" for purposes of the Act. However, fortunately for the non-profit ADTC, Judge Janavs declined to award attorney fees to the petitioners.

The ADTC is not a government entity or agency, despite the name "Town Council." The Town Council, which formed in 1991, like a number of other rural town councils in north Los Angeles County, functions as a community association and ultimately a channel of communication to lawmaking bodies in Los Angeles County as well as the federal government. Because of the community's rural location in Los Angeles County, and lack of a commercial tax base to fund municipal operations, it cannot incorporate as a municipal corporation under State law. In 1994, the ADTC incorporated as a California non-profit public benefit corporation, in order to obtain the protections provided by the Corporations Code for its volunteer officers. Currently, the ADTC operates under a community-elected Charter and bylaws. It has no governmental authority, no ability to tax, no land-use authority, no police power, nor is it a special district with jurisdiction over any public service in the Agua Dulce area. It owns no property and has no formal "office" space. Nevertheless, the ADTC Charter and bylaws commit it to holding open meetings, providing notice of those meetings, and conducting those meetings in the spirit of the Brown Act. At this time the ADTC intends to make a good faith effort to comply with the Brown Act, including requesting training from Los Angeles County staff. The ADTC has not yet decided whether to appeal this decision.

FOR FURTHER INFORMATION, CALL CHRISTINE KUDIJA, COUNSEL TO ADTC, 661-254-6266.